IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2537 OF 2004

Mumbai Municipal Pensioners Association, a Society registered under the Societies Registration Act and Mumbai Public Trust Act,having its office at G/North Municipal Ward Office, Ground Floor, Room No. 9, J.K. Sawant Marg, Dadar, Mumbai - 400 028. ... Petitioners

V/s.

Municipal Corporation of Greater Mumbai a statutory Corporation duly constituted under the Mumbai Municipal Corporation Act, 1888, having its office at Mahapalika Marg, Mumbai - 400 001. ... Respondents

Mr. N.D. Jaywant for the petitioners.
Mr. A.Y. Sakhare, Sr. Counsel with Ms. A.K. Savla for respondents.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 16th November, 2006

ORAL JUDGMENT [PER : F.I. REBELLO, J.]

. The petitioner is an association of retired employees of Brihanmumbai Municipal Corporation (BMC) and at the time when the petition was filed, had 8669 retired employees of BMC as their members. The BMC has made applicable a pension scheme in lieu of Provident Fund benefits for its employees with effect

from 6th June, 1955. The rules framed are known as BMC Pension Rules, 1953 (hereinafter referred to as "Pension Rules"). By the present petition, the petitioners have impugned four circulars issued by BMC dated 18.01.1994, 10.01.2000, 11.01.2000 and 07.04.2004. It is case of the petitioners that retired employees who were drawing pensions constitute one homogenous class. The effect of the circulars was micro-classification within the said homogenous group. Said micro-classification has no nexus with the object of the pension scheme and considering the test laid down by the Supreme Court in **D.S. Nakara and others V/s. Union of India, AIR 1983 Supreme Court 130,** the said classification is arbitrary being illegal, consequently the circulars are liable to be quashed and set aside being null and void.

2. On behalf of the respondents the learned counsel submits, that the circulars are neither arbitrary nor unreasonable. In-fact the circular dated 18.01.1994 was issued after discussions with the representatives of the petitioners namely the office bearers. It is further pointed out that the judgment in Nakara’s case has been explained by the Supreme Court in the case of **Krishena Kumar V/s. Union of**

India (1990) 4 SCC 207, which has been explained by the Supreme Court in **State of West Bengal and ors. V/s. Ratan Behari Dey and ors., (1993) 4 SCC 62.** It is, therefore, submitted that there has been no arbitrariness and even if classification has been made between pensioners, it discloses a clear nexus with the object which was to maintain the uniformity in the pension payable. It has been pointed out that said circular was operative from the period from 01.07.1990 to 30.06.1995 and has been subsequently replaced by circular dated 11.01.2000 which gave effect to a revised pension scheme from 01.07.1995 and circular dated 10.01.2000 which further revised the pension scheme with effect from 01.01.1996. It has been pointed out that these revisions have been carried out from time to time pursuant to revision of pay scales. A similar exercise was done by circular of 07.04.2000.

3. Before dealing with the circular of 18.01.1994, it will be necessary for us to first deal with the circular dated 10.01.2000. By this circular the BMC Pension Rule 53 was amended retrospectively from 01.01.1996. The amended pension rules were to be applicable to the BMC employees who have retired after 1996 and in respect of employees who had retired

before 01.01.1996 separate orders were to be issued. Insofar as this circular is concerned, there is no differentiation or distinction. Insofar retiring pensioners are concerned, all retirees who are entitled to pension have been treated equally. At any rate, subsequent notifications in respect of those retired before 01.01.1996 have not been placed before us nor is it a subject matter of any challenge, whereby it can be established that the class of retirees who retired before 01.01.1996 and those retired after 01.01.1996 have been treated differently. In the absence of any such challenge or material, the challenge to circular dated 10.01.2000 must fail as the pensioners by that circular have been treated as one homogenous class.

4. Insofar as circular of 11.01.2000 was in respect of revision of pension subsequent to the revision in the pay scales which were revised from 01.07.1995. By clause 4 (a) of the circular, the increased D.A. has been uniformly granted to all pensioners for the period set out under Sr. No. 1 to 6. Insofar as clause 4 (b) is concerned, the pension of those who retired after 01.07.1995 is fixed based on the revised pay scale and in respect of those who

have retired before 01.07.1995, separate orders were to be issued. Even in this case, there is no difference insofar as dearness relief is concerned. Once that be a case, in our opinion the challenge insofar as circular dated 11.01.2000 is devoid of merit and to that extent has to be rejected.

5. We may now deal with the circular dated 07.04.2005. It is not necessary for us to go into various benefits set out in the circular. We are only concerned with the terminal benefits which as set out under clause (11) and reads as under:

> "Though the revised pay will come into force from April, 2005. instructions in respect of Pensionary Benefits viz. Pay Fixation, Pension, Calculation of family pension etc. of the employees retiring on 01.04.2000 or thereafter shall be separately given by the pay scale section of the Deputy Chief Accountant (Estt. Two) General Administration. Till the said instructions are received, the calculation of the pension, family pension of the employees/officers who are going to be retired shall be done on the basis of the old pay."

. Again on a perusal, this circular would make it clear that there is no micro-classification of pensioners. Clause (11) says that separate Notification will be issued in respect of those

employees who have retired after 01.04.2000. Considering that the circular itself was issued on 07.04.2005. The only grievance, therefore, which the pensioners can have, is about non issuance of the circular. The learned counsel for the respondents explains that the same was not issued as the petition was pending before this Court.

. Considering the above, we direct the respondents to issue circular in terms of clause (11) within eight weeks from today and thereafter fix and pay revised pensionary benefits of the employees retired after 01.04.2000 within three months thereafter.

6. That brings us to the main challenge, which was canvassed before us insofar as the circular of 18.01.1994 is concerned. The period of that circular was operative from 01.07.1990 and expired on 30.06.1995. The petition has been filed in the year 2004. In other words, nearly 10 years after, that circular was issued and when it no longer was in force. It is true that in Nakara’s judgment, the Supreme Court has set out that, there can be micro-classification in respect of one homogenous

class of pensioners. In the instant case the issue is regarding dearness relief, which was revised in terms of the formula set out in clause (1) of the said circular. The learned counsel for the respondents had sought to point out that judgment in Nakara's case has been explained by the subsequent judgment of the Supreme Court in Ratan Behari Day and Ors. (Supra). After considering the ratio of the judgment in Ratan Behari Day and ors., we are clearly of the opinion that the ratio of the judgment therein in no way deflects from the principle as laid down in Nakara (Supra). The issue in Ratan Behari Day was whether it was open to the State or to the Corporation to change the conditions of service. There was no pension scheme for the employees, prior to 1st April, 1997. Their terminal benefit was by way of contributory provident fund. Regulations were made introducing a pension scheme from 1st April, 1997. It is in that context that the Supreme Court said that it is open to the State or the Corporation as the case may be to change the conditions of service unilaterally. The terminal benefits as well as pensionary benefits constitute conditions of service. That judgment is clearly distinguishable. In the instant case before the circular of 1994 was issued, there was discussions

with the petitioners. Record produced before us indicates that there seems to be consent to the scheme by the petitioner. Even if it not be so, in our opinion, as the circular is no longer in force, and ceased to be applicable from 30.06.1996 and petitioners have approached this Court in the year 2004, the challenge being belated, it is not required to be answered by this Court at this belated stage. The respondents thereafter have amended the pension scheme in which no distinction is made insofar as dearness relief is concerned.

7. Considering the above in our opinion, except for the directions issued, Rule discharged. In the circumstances, there shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]